

TITLE 2: NATURAL RESOURCES
DIVISION 4: LAND RESOURCES

§ 4537. Actions for Foreclosure of Mortgages.

(a) *Where Brought.* All judicial actions for the foreclosure of a mortgage shall be brought in the Commonwealth Trial Court.

(b) *Service of Summons.* Service of summons in an action of foreclosure shall be made in accordance with the applicable provisions of title 7 of this code, and the Commonwealth Trial Court's Rules of Civil Procedure.

(c) *Complaint for Foreclosure.* The complaint for foreclosure shall set forth:

- (1) The date and due execution of the mortgage;
- (2) Its assignments, if any;
- (3) The name and residence of the mortgagor;
- (4) A description of the mortgagor;
- (5) A description of the mortgaged property;
- (6) A statement of the date of the note or other obligation secured by the mortgage, and the amount claimed to be unpaid thereon; and
- (7) The names and residences of all persons having or claiming an interest in the property subordinate in right to that of a holder of the mortgage, all of whom shall be made defendants in the action.

No person holding a conveyance from or under the mortgagor of property mortgaged, or having a lien on the property, which conveyance or lien does not appear of record at the time of the commencement of the action, need be made a party to the action, and the judgment therein rendered, and the proceedings therein had, shall be conclusive against the party holding the unrecorded conveyance or lien if he had been a party to the action.

(d) *Trial and Judgment.* If, upon trial in the action, the court finds the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest, costs, and attorney's fees, and shall render judgment for the sum so found due, and order that the same be paid into court within a period of three months from and after the date on which the order was made.

(e) *Sale of the Mortgaged Property.* When the mortgagor, after being directed to do so, as provided in subsection (a) of this section, fails to pay the principal, interest, costs, and attorney's fees at the time directed in the order, the court shall order the property (or so much of it as may be necessary) to be sold; but such sale shall not affect the rights of persons holding prior recorded encumbrances upon the same estate or part thereof. Any sale of property under a judgment of foreclosure shall be made by a person appointed by the court for that purpose and must be made at a public place to be designated by the court, upon the notice and in the manner provided by law governing sales under execution with such additional requirements including but not limited to the extension of the term of notice, and requirement of publication or announcement in local newspapers, radio or television, as may be prescribed by the court to attempt to assure a reasonable return from the sale. Nothing in this chapter shall deny to the mortgagee, or to a federal government agency that has insured or guaranteed payment on a mortgage and which succeeds to the interest of the mortgagee, the right to purchase

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the mortgaged property at a foreclosure sale, and to receive a certificate of sale and deed pursuant to subsection (f) of this section.

The deed shall evidence the transfer of title to all rights and interests that were pledged by the mortgager to secure payment of the mortgage, as permitted by N.M.I. Const. art. XII, § 2. A mortgagee may transfer to a federal mortgage insurer by deed or other instrument title to all rights and interests in property that it purchases at a foreclosure sale.

(f) *Certificate of Sale: Deed Effect.* Whenever any real property shall be sold under judgment of foreclosure pursuant to the provisions of this chapter, the person making the sale must give to the purchaser a certificate of sale and properly record a duplicate thereof. The certificate shall state the date of judgment under which the sale was made, the names of the parties, a particular description of the real property sold, the price bid for each distinct lot or parcel, and the period during which the property is subject to redemption. At the expiration of the time for the redemption of the property, if the property is not redeemed, the person making the sale, or that person's successor in office, or other officer appointed by the court, must make to the purchaser, the purchaser's heirs, or assignees, or to any person who has acquired the title of the purchaser by redemption or otherwise, a deed or deeds to the property. The deed shall vest in the grantee all the rights, title and interest of the mortgagor in and to the property sold, at the time the mortgage was executed, or subsequently acquired by the mortgagor, and shall be a bar to all claim, right, or equity of redemption in or to the property by the parties to the action, their heirs and personal representatives, and also against all persons claiming under them, or any of them, subsequent to the commencement of the action in which the judgment was rendered.

(g) *Application of Proceeds.* The proceeds of every foreclosure sale must be applied first to the costs of sale, to the costs including attorney's fees adjudged by the court to be due in the judgment of foreclosure, and then to the debt. If there is any surplus, it must be brought to court for the use of the defendant or of the person entitled to it, subject to the order of the court.

(h) *Judgment for Balance After Sale of Property.* Upon the sale of any real property, under a decree for a sale to satisfy a mortgage or other encumbrance, if there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall give a decree against the defendant for any balance for which, by the record of the case, the defendant may be personally liable to the plaintiff. The execution may issue immediately if the balance is all due at the time of the rendition of the decree. Otherwise, the plaintiff is entitled to execution at the time the balance remaining would have become due by the terms of the original contract, which time shall be stated in the decree.

(i) *Disposition of Proceeds if Entire Debt Not Due.* If the debt which the mortgage secured is not all due, as soon as sufficient property has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions without injury to the parties, the whole shall be ordered to be sold in the first instance, and the entire debt and costs paid, there being a rebate of interest where such rebate is proper.

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(j) *Vacating Sale*. Upon motion by an aggrieved party filed within one year of the date of sale, the court may vacate a foreclosure sale and order a new sale upon a finding that there has been fraud in the procurement of the foreclosure decree, where the sale has been improperly, unfairly, or unlawfully conducted, or when the sale is so tainted by fraud that to allow it to stand would be inequitable.

Source: DL 4-143, § 25; amended by PL 5-8, § 9.

Commission Comment: Section 4 of PL 6-25, the “Commonwealth Judicial Reorganization Act of 1989,” provides that “[w]herever the term ‘Commonwealth Trial Court’ appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court.”